

of the month following the month in which an application is received by the Secretary pursuant to paragraph (a)(1) of this section, the Secretary shall either determine that the provisions of paragraphs (a)(1) through (4) of this section either have been met or have not been met, or notify the applicant that additional information is needed prior to making a determination. Such designation shall be effective the first of the month following the date of designation and shall continue until such designation is canceled pursuant to § 1002.27: *Provided*, That notwithstanding the provisions of paragraphs (a)(1) through (4) of this section, any plant which for the month immediately preceding the effective date of this section, had a designation pursuant to § 1002.24 as then in effect, is hereby designated a regular pool plant from the effective date of this section until such designation is canceled pursuant to § 1002.27.

(1) An application by the operator of the plant for such determination has been addressed to the Secretary and filed at the office of the market administrator: *Provided*, That if 50 percent or more of the dairy farmers delivering milk at such plant deliver such milk for the account of a cooperative association which does not operate the plant but for which milk such association receives payment, an application must be filed by such cooperative association as well as the person operating the plant.

(2) The plant is located in New York, New Jersey, or Pennsylvania.

(3) The plant was a pool plant pursuant to paragraph (a) or (b) of § 1002.28 for each of the 12 months immediately preceding the month during which an application is filed.

(4) The operating requirements of § 1002.26 are being met.

(b) A plant may be designated at any time as a regular pool plant upon application made by the person operating the plant to the Secretary showing that the plant is a replacement for one or more pool plants, designated pursuant to this section, which are operated by him and that substantially all of the dairy farmers delivering milk at the plant previously delivered milk to the pool plant or plants replaced.

§ 1002.25 Bulk tank units.

Any handler receiving milk from farms in a tank truck shall establish such farms in one or more bulk tank units (hereinafter called "units") each consisting of one or more farms, in accordance with provisions of this section. The milk of any farm included in a unit shall be considered for pricing purposes as having been received by the handler in the unit at the nearest point of the township (as determined pursuant to § 1002.52(b)) in which such farm is located. Any handler who receives milk at a pool plant or a plant distributing Class I-A milk in the marketing area which is delivered from a farm to such plant in a tank truck shall be deemed to have received such milk from a unit, pool, partial pool, or nonpool, and any handler who receives bulk milk from a farm in a tank truck containing pool milk shall be deemed to have received such milk from a farm of a unit either pool, partial pool, or nonpool.

(a) Handlers who may establish, maintain, and be responsible for pool units are as follows:

(1) A handler who operates a pool plant or a handler who operates a plant from which Class I-A milk is distributed in the marketing area other than to another plant: *Provided*, That a handler who is affiliated with or is a subsidiary of a handler operating a pool plant may also operate pool units if both handlers notify the market administrator in writing of such relationship: *Provided further*, That such handler who operates a distributing plant but not a pool plant, to be eligible to maintain a pool unit for any month, must have combined receipts of skim milk and butterfat from such unit for such month classified as Classes I-A and I-B in a percentage at least as great as the market percentage of pool milk in Classes I-A and I-B for the same month of the preceding year.

(2) A cooperative handler who does not operate a plant but who receives milk from farms in a tank truck and delivers such milk to plants of other handlers if such cooperative for 12 months has been qualified as a basis for payments pursuant to § 1002.77 or if such cooperative has operated a pool

unit for 12 consecutive months: *Provided*, That such cooperative must meet the definition of a cooperative set forth in § 1002.77(a)(1).

(3) Any other cooperative handler who does not operate a plant if such cooperative meets the definition of a cooperative set forth in § 1002.77(a)(1) subject to the conditions of this section.

(4) For the months specified in paragraph (a)(4)(i) or (ii) of this section, any other handler operating a unit in any of the months of April, May, or June which unit had for such month any skim milk or butterfat classified as Class I-A milk in the marketing area (on some basis other than failure to account for such milk) and had a total Class I-A and Class I-B classification in a percentage at least as great as the market percentage of pool milk in Classes I-A and I-B for the same month in the preceding year.

(i) Such month.

(ii) Each of the months through March following such month except for any month when the Class I-B or combined Class I-A and Class I-B of such unit is less than 60 percent.

(b) The handler may establish the units in any manner chosen by him, subject to the following limitations:

(1) Each unit shall have a headquarters where the basic record of receipts and butterfat tests of milk from each farm are maintained and where there is maintained the basic record of each receipt and each delivery of milk by each tank truck receiving milk from farms of the unit and related details with respect to the movement of such milk.

(2) Each unit shall be given a name indicating the general geographic area in which farms comprising such unit are located.

(3) The handler shall declare whether each unit is to be operated as a pool unit. Farms from which the milk is to be pooled shall be established in a separate unit from those which are not to be pooled.

(4) Farms in the area specified in paragraph (e) of this section shall be in units separate from farms in the area specified in paragraph (f) of this section.

(c) Except as set forth in paragraphs (c)(1) through (5) of this section, a han-

dlar may declare that a unit is to be operated as a pool unit and at any time may add a farm to a pool unit: *Provided*, That a handler pursuant to paragraph (a)(4) of this section may not add farms to a pool unit during the months of July through March unless such handler's Class I-A skim milk or butterfat utilization exceeds the total receipts of skim milk or butterfat, respectively, in milk from the pool unit, and in the latter case he may add only the smallest number of farms necessary to provide sufficient milk to cover such Class I-A utilization.

(1) If the unit is a declared nonpool unit or if the farm is a part of a declared nonpool unit of such handler, the unit or farm may be changed to a pool status, except as excluded from the pool milk definition pursuant to § 1002.14(d), only beginning the first day of a month upon notice to the market administrator by not later than the 10th day of such month. If the notice is filed after the 10th day of the month, the effective date shall be the first day of the following month except as specified in paragraph (c)(5) of this section.

(2) In the period of December through June, no new pool unit may be established, no nonpool or partial pool unit may be declared to be a pool unit, and no farm may be added to a pool unit if the handler caused, as specified in paragraph (d) of this section, any pool unit or any farm of a pool unit to become nonpool in the period of July through November immediately preceding: *Provided*, That this limitation shall not prevent the handler from including in a pool unit a farm which for the first time has converted from can delivery to bulk tank delivery and from which the handler received as pool milk all milk delivered by such farm in cans for a period of 30 days immediately preceding: *Provided further*, That, except in the case set forth in paragraph (d)(3) of this section, this paragraph (c)(2) shall not be applicable if the farm which is caused to become nonpool thereby becomes a producer farm under another order with a provision for marketwide equalization.

(3) No farm which was caused to become nonpool may be made a part of a pool unit by a handler set forth in paragraphs (c)(3)(i) through (iv) of this

section until after the passage of a complete April-May-June period following the time such farm was caused to become nonpool:

(i) The handler who caused the farm to become nonpool.

(ii) The handler or other person who received the milk as nonpool milk.

(iii) A handler who is substantially under the same management control, or ownership as the handler or other person set forth in paragraph (c)(3)(i) or (ii) of this section.

(iv) A handler who receives the milk through arrangement with the handler or other person set forth in paragraph (c)(3)(i), (ii), or (c)(3)(iii) of this section.

(4) A handler may transfer a farm from one pool unit to another of his pool units on the first day of any month upon notice to the market administrator by not later than the 10th day of such month.

(5) A farm shall automatically be added to a pool unit or a nonpool unit shall automatically become a pool unit effective the first day of any month in which any of the skim milk or butterfat in milk of such farm or unit is assigned pursuant to § 1002.45 to Class I-A milk unless the handler is precluded from doing so pursuant to paragraph (c)(2) or (c)(3) of this section or unless such milk is considered producer milk under an other order with a provision for marketwide equalization. If some but not all skim milk or butterfat in milk received from such farms previously a part of a nonpool unit is assigned to Class I-A milk the handler operating such unit has until the time of filing the report required pursuant to § 1002.30 to specify which farms are to be added to a pool unit and if upon verification by audit the market administrator finds that other skim milk or butterfat in milk of a declared nonpool unit is assigned to Class I-A milk, the handler operating such unit has until ten days after notification by the market administrator to specify which farms are to be added to a pool unit. In absence of such specification, all eligible farms shall be added to the pool unit.

(d) A handler may cause a pool unit or a farm which is a part of a pool unit to become nonpool by the methods set

forth in paragraphs (d)(1) through (4) of this section: *Provided*, That the failure of a unit to meet the pool requirements set forth in paragraph (f) of this section shall not be considered for purposes of this paragraph to be a change of pool status caused by the handler: *Provided further*, That a handler pursuant to paragraph (a)(4) of this section must continue in a pool unit any farm which was a part of such handler's pool unit in any of the months of April, May, or June preceding from which he receives milk or from which any other handler receives milk through arrangement with him: *Provided further*, That if a unit operated by a handler is reported by another handler which is a cooperative, the actions specified in paragraphs (d)(1), (2), and (4) of this section must be concurred in by such cooperative handler.

(1) The handler may change the status of a declared pool unit to a declared nonpool unit effective the first day of any month upon notice to the market administrator by not later than the 10th day of such month. If the notice is filed after the 10th day of the month, the effective date shall be the first day of the following month.

(2) The handler may transfer a farm from a pool unit to a nonpool unit effective the first day of any month upon notice to the market administrator by not later than the 10th day of such month. If the notice is filed after the 10th day of the month, the effective date shall be the first day of the following month.

(3) The handler may so operate a unit located in the area specified in paragraph (e) of this section that its pool status is cancelled pursuant to § 1002.27.

(4) The handler may arrange for the milk of a farm in his pool unit to be delivered to another person as nonpool milk. Any delivery of milk by a farm in a handler's pool unit to another person as nonpool milk shall be considered to have been arranged by such handler unless such handler can establish that such other person is not substantially under the same management, control or ownership as such handler and that such handler was in no way a party to such nonpool delivery.

(e) A declared pool unit must be operated to meet the requirements set

forth in §1002.26 if the farms of such unit are located in the following area: New York, New Jersey, the counties of Addison, Rutland, and Bennington in Vermont, the county of Berkshire in Massachusetts, or in Pennsylvania. Failure to meet such requirements shall make such declared pool unit subject to suspension and cancellation pursuant to the procedure set forth in §1002.27. This paragraph shall not be applicable to a cooperative handler specified in paragraph (a)(3) of this section.

(f) A declared pool unit made up of farms located outside the area specified in paragraph (e) of this section or a declared pool unit made up of farms specified in paragraph (e) of this section and operated by a cooperative handler specified in paragraph (a)(3) of this section shall be a pool unit in the months of July through March if at least 25 percent of the milk in such unit is delivered in such month to pool plants, and shall be a pool unit in the months of April through June only if 60 percent of the milk of such unit was received at pool plants during the period of October through December immediately preceding or if such handler received no milk of such unit or from farms of such unit in the preceding October through December.

(g) Any unit declared to be a pool unit shall be designated a pool unit in any month (1) if the handler is qualified in such month pursuant to paragraph (a) of this section, (2) if such unit meets all the requirements of this section applicable to it to be a pool unit, or (3) if the designation of such unit has not been cancelled pursuant to §1002.27.

(h) Each handler shall report by not later than the 10th day of the month any changes in units during the preceding month and as of the first day of such month.

(i) Whenever the market administrator finds that a handler has received bulk tank milk from a farm required to be included in an established unit but which has not been so included, he shall tentatively assign such farm to a unit and promptly notify the handler of such action. Unless otherwise requested by the handler within 10 days of such notice, the tentative assign-

ment by the market administrator will become final.

(j) Whenever the market administrator finds that a handler has caused milk to become nonpool pursuant to paragraph (d)(4) of this section he shall promptly notify the handler of such finding. Within 10 days of such notice the handler may, except as to any such milk pooled under another order, (1) make a written claim that the failure to include the milk involved as pool milk was an error and, in such event, the market administrator shall pool such milk and rescind his finding, or (2) make a written offer to submit proof that he had not caused such milk to become nonpool. In the latter event, the market administrator shall examine such proof and shall either rescind his original finding or confirm it. Failure to respond to the market administrator's notice shall be deemed to confirm the finding.

(k) Units other than those which are pool units pursuant to paragraph (g) of this section shall be designated partial pool units if they meet the provisions set forth in paragraphs (k)(1) and (2) of this section.

(1) Any nonpool unit which would have been automatically made a pool unit pursuant to paragraph (c)(5) of this section except that the handler is precluded from adding farms thereof to a pool unit pursuant to paragraph (c)(2) or (c)(3) of this section. If a unit of a handler becomes a partial pool unit pursuant to this paragraph, all of the handler's pool units and partial pool units shall be combined and the skim milk and butterfat in milk of the partial pool units assigned to Class II and Class III of such combined total prior to any skim milk and butterfat in the partial pool unit milk being assigned to Class I-A.

(2) Any unit the milk of which fails to meet the pooling requirements of paragraph (f) of this section, or any unit operated by a handler not specified in paragraph (a) of this section, as being eligible to establish and maintain pool units, or any unit made up of farms located in the 401 miles and over freight zone unless the handlers operating such unit is eligible to establish a pool unit and has specifically requested such unit to be so designated.

(l) The market administrator shall publicly announce the names of handlers establishing pool units and the names and headquarters of such units. He shall also publicly announce any change in the pool status of such units, and the names of handlers who are ineligible to add farms to a pool unit under the terms set forth in paragraph (c)(2) of this section.

[33 FR 8201, June 1, 1968, as amended at 56 FR 5321, Feb. 11, 1991]

§ 1002.26 Operating requirements.

The person operating a pool plant designated pursuant to § 1002.24 or a declared pool unit consisting of farms in the area specified in § 1002.25(e) shall stipulate to each of the following requirements:

(a) Be willing to dispose of as Class I-A milk in the marketing area milk received at the plant or on the unit from dairy farmers and agree that if a plant designation is canceled for failure to meet this requirement, the Class I-A and Class I-B milk of such plant through the partial pool plant and partial pool unit provisions shall be priced and equalized from the effective date of cancellation through the following June 30;

(b) Keep such control over the sanitary conditions under which milk received at the plant or on the unit is produced and handled that the milk can meet the requirements of a source of milk for the marketing area: *Provided*, That approval by a health authority of the plant as a source of milk for the marketing area shall constitute sufficient evidence that this requirement is being met even though such approval is restricted to prohibit shipment to the marketing area of milk for specified periods during which permission is given by such health authority for receiving unapproved milk or skim milk at the plant or for shipment of approved skim milk from such plant; and

(c) Have no commitments for disposition of milk that prevent him from utilizing milk as set forth in § 1002.27(g).

[33 FR 8201, June 1, 1968, as amended at 56 FR 5322, Feb. 11, 1991]

§ 1002.27 Suspension and cancellation of designation.

The designation of a pool plant pursuant to § 1002.24 or of a declared pool unit consisting of farms in the area specified in § 1002.25(e) may be suspended or canceled under any of the following provisions:

(a) The designation shall be canceled effective on the first of the month following the filing with the market administrator, and on a form prescribed by him, of an application by the handler operating the plant: *Provided*, That a plant whose designation is so canceled on the first of any of the months of August through November shall be a pool plant if it meets the provisions of paragraph (e) of § 1002.28, and shall not be a pool plant pursuant to any other provision of this order prior to December 1 following such cancellation: *Provided further*, That such application for cancellation shall be accompanied by proof that the handler, if not a cooperative association qualified pursuant to § 1002.77 has notified any qualified cooperative association which has any members who deliver milk to such plant, and has notified individually all producers delivering to such plant who are not members of such qualified cooperative association, of his intention to make such application: *Provided further*, That if 50 percent or more of the producers delivering milk at such plant deliver such milk for the account of a cooperative association which does not operate the plant but for which milk such association receives payment, an application must be made by such cooperative association as well as by the handler operating the plant: *Provided further*, That if a handler applies for a replacement designation pursuant to § 1002.24(b), the designation of the plant or plants replaced shall be canceled automatically at the time the replacement designation becomes effective.

(b) The designation of any plant which in any month is not approved by a health authority as a source of milk for the marketing area shall be automatically suspended at the beginning of the second month following the month that the handler receives notice that the plant does not have health approval as a source of milk for the marketing area unless the absence of